112TH CONGRESS 1st Session } HOUSE OF REPRESENTATIVES { REPT. 112–159 Part 1

HOOVER POWER ALLOCATION ACT OF 2011

JULY 20, 2011.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural Resources, submitted the following

R E P O R T

[To accompany H.R. 470]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 470) to further allocate and expand the availability of hydroelectric power generated at Hoover Dam, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 470 is to further allocate and expand the availability of hydroelectric power generated at Hoover Dam.

BACKGROUND AND NEED FOR LEGISLATION

The Boulder Canyon Project Act of 1928 authorized the construction of what is now the Hoover Dam. Upon its completion in 1935, it was the tallest dam and the largest hydroelectric producer in the world. Although it is no longer either, it still annually produces an average of 2,074 megawatts, depending on the water year. This is the equivalent of two average nuclear plants and enough to power over 20 million homes.

In order to finance the building of the Hoover Dam and its power plant, the federal government partnered with the Metropolitan Water District of Southern California, the California cities of Los Angeles, Glendale, Pasadena and Burbank, Southern California Edison Company, the Arizona Power Authority, the Colorado River Commission of Nevada and the City of Boulder, Nevada (collectively known as Schedule A contractors). These power users received 50-year contracts as a result of this partnership. Without question, the benefits of the dam and its power helped stimulate economic and population growth in Arizona, California and Nevada.

Congress passed the Hoover Power Plant Act of 1984 (HPPA or P.L. 98–381) to extend those original contracts, authorize advance funding for upgrades to the Hoover power turbines and allocate the power produced as a result of those upgrades to entities that funded the improvements. Known as the Schedule B contractors, these entities include the southern California cities of Glendale, Pasadena, Burbank, Anaheim, Azusa, Banning, Colton, Riverside and Vernon, and the States of Arizona and Nevada. In that Act, Congress stipulated that the new Schedule A and Schedule B contracts would span 30 years. Schedule C governs allocations of excess energy, if any, to the three states. Such excess power would be generated in unusually high water years, which occurred in 1984.

The contracts authorized by P.L. 98–381 expire in 2017. Schedule A and B contractors are pursuing the passage of H.R. 470 to extend the Hoover allocations for another 50 years. These 50-year contracts mirror the customers' 50-year Lower Colorado River Multi-Species Conservation Plan agreements with the federal government.

H.R. 470 mandates that each Schedule A and B power user give up five percent of its Hoover power resource so that a new pool is set aside (called Schedule D) for new allottees in the Hoover Dam region. Eligible new allottees can include rural electric cooperatives, municipal power users, irrigation districts and Indian tribes. Schedule D power will be administratively allocated by the Western Area Power Administration in a public process.

COMMITTEE ACTION

H.R. 470 was introduced on January 26, 2011 by Congressman Joseph Heck (R–NV). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water and Power. The bill was also referred to the Committee on the Budget. On May 21, 2011, the Subcommittee on Water and Power held a hearing on the bill. On June 15, 2011, the Full Resources Committee met to consider the bill. The Subcommittee on Water and Power was discharged by unanimous consent. No amendments were offered and the bill was ordered favorably reported to the House of Representatives by unanimous consent.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; table of contents

Section 1 provides that this Act may be cited as the "Hoover Power Allocation Act of 2011."

Section 2. Allocation of contracts for power

Section 2(a) amends HPPA to increase the Schedule A contingent capacity at Hoover Dam proportionally based on the maximum dependable operating capacity, and then reduces the Schedule A summer and winter firm energy by 5% of the amount to be provided after October 1, 2017, to existing Schedule A contractors. In addition, this section makes technical and conforming changes to the underlying Act.

Section 2(b) amends HPPA to increase the Schedule B contingent capacity proportionally based on the maximum dependable operating capacity, and then makes a 5% reduction in summer and winter firm energy after October 1, 2017, to existing Schedule B contractors. In addition, this section also makes technical and conforming changes to the underlying Act.

Section 2(c) makes further technical and conforming changes to HPPA related to Schedule C.

Section 2(d) amends HPPA by directing the Secretary of Energy to create a new Schedule D from the apportioned allocation equal to 5% of Schedules A and B of contingent capacity and firm energy after October 1, 2017. This power will be made available to new allottees that do not already receive Schedule A or B contingent capacity and firm energy. Contracts offered under Schedule D will include a provision requiring new allottees to pay a proportionate share of their state's contribution to the cost of the Lower Colorado River Multi-Species Conservation Program, and a provision that would require new allottees to execute the Boulder Canyon Project Implementation Agreement Contract.

Section 2(d) also gives the Western Area Power Administration (Western) 36 months from the date of enactment to allocate the Schedule D contingent capacity. Any of the Schedule D contingent capacity and firm energy that is not allocated and placed under contract by October 1, 2017, will be returned in the same proportion to the contractors in Schedule A and Schedule B.

The section also allows federally recognized Indian tribes to contract directly with Western for any power they may receive and to develop allocation criteria in direct consultation with Western. The Committee expects that Western and the state regulatory bodies in Arizona and Nevada will conduct a full and open public hearing and review process upon the enactment of this legislation. The administrative process should fairly and equitably determine allocations from the new power pool. With the opportunity for irrigation districts, rural electric cooperatives and other eligible entities to receive allocations from the new proposed Schedule D, the Committee expects that Western and the state regulatory bodies will undertake an open, thorough and transparent assessment of the relevant power requests of potential new Hoover power recipients, including an assessment of the applicants' power needs and the classes of customers they serve, and act in an impartial and unbiased manner to make allocation determinations in an objective manner consistent with state and federal preference standards. The Committee further expects that the process and analytical results will be documented and made available for examination.

Section 2(e) and 2(f) make technical and conforming changes to HPPA to take into account other changes made by this legislation.

Section 2(g) amends HPPA to establish the expiration date of the contract as September 30, 2067. This section further directs Western to collect a pro-rata share of Hoover Dam repayable advances from new allottees prior to October 1, 2017, and remit a proportional share of the advances to existing Hoover contractors. Section 2(g) also authorizes Hoover contractors to engage in transactions for Hoover power with independent system operations and requires the contracts executed pursuant to this legislation to contain the same material terms as Section 5.6 of the long-term contracts, effective on the date of enactment.

Section 2(h) amends HPPA to strike the date "2017" and insert the contract expiration year of "2067."

Section 2(i) amends HPPA to establish a mechanism by which the Secretary of Energy would offer the contingent capacity and firm energy made available if an existing contractor fails to accept an offered contract.

Section 2(j) amends HPPA to state that the obligation of the Secretary of Energy to deliver contingent capacity and firm energy is subject to the availability of the water needed to produce the contingent capacity and firm energy. Section 2(j) also directs the Secretary of Energy to adjust the continent capacity and firm energy under Schedules A, B and D proportionally if water is not available to produce contingent capacity and firm energy.

Section 2(k) makes conforming changes in HPPA by repealing Sections 105(e) and (f).

Section 2(l) provides for continued Congressional oversight regarding the terms and conditions of the governing contracts for power generated at Hoover Dam until September 30, 2067.

Section 2(m) makes a conforming change to Section 105(h)(l) of HPPA.

Section 2(n) confirms that the rights of contractors to capacity and energy would vest under the contracts through September 30, 2067.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 470—Hoover Power Allocation Act of 2011

H.R. 470 would update the statutory allocation of electric power generated at the Hoover Dam among various users. The current allocation expires at the end of fiscal year 2017. The legislation would increase the amount of electricity to be marketed by the Western Area Power Administration (WAPA) and would allocate much of the dam's currently unallocated electricity to Native American tribes and other entities. The revised allocations would remain in effect from 2017 through 2067. Based on information from WAPA, CBO estimates that implementing this bill would have a negligible effect on net direct spending and spending subject to appropriation.

Enacting H.R. 470 would affect direct spending; therefore, pay-as-you-go procedures apply. However, CBO estimates that the net effects would be insignificant for each year. In the absence of this legislation, CBO expects that WAPA would allocate the electricity from Hoover Dam by regulation. CBO estimates that any differences between the electricity allocation under H.R. 470 and the allocations developed under such regulations would have a negligible effect on offsetting receipts (a credit against direct spending) from electricity sales because the agency is required by law to keep electric rates as low as possible while recovering all costs of generation and marketing over time. CBO also estimates that implementing the bill would have no significant impact on WAPA's administrative costs, which are funded by appropriations and offset by proceeds from the sale of electricity. Enacting this bill would not affect revenues.

H.R. 470 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Kathleen Gramp. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, credit authority, or an increase or decrease in revenues or tax expenditures. Enacting H.R. 470 would affect direct spending; therefore, pay-as-you-go procedures apply. However, CBO estimates that the net effects would be insignificant for each year.

3. General Performance Goals and Objectives. This bill does not authorize funding and therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 105 OF THE HOOVER POWER PLANT ACT OF 1984

SEC. 105. (a)(1) The Secretary of Energy shall offer:

(A) To each contractor for power generated at Hoover Dam a ⟦renewal⟧ contract for delivery commencing ⟦June 1, 1987⟧ *October 1, 2017*, of the amount of capacity and firm energy specified for that contractor in the following table:

⟦SCHEDULE A

Long Term Contingent Capacity and Associated Firm Energy Reserved for Renewal Contract Offers to Current Boulder Canyon Project Contractors

Contractor	Contingent capacity (kW)	Firm energy (thousands of kWh)		
		Summer	Winter	Total
Metropolitan Water District of Southern California	247,500	904,382	387,592	1,291,974
City of Los Angeles	490,875	488,535	209,658	698,193
Southern California Edison Company	277,500	175,486	75,208	250,694
City of Glendale	18,000	47,398	20,313	67,711
City of Pasadena	11,000	40,655	17,424	58,079
City of Burbank	5,125	14,811	6,347	21,158
Arizona Power Authority	189,000	452,192	193,797	645,989
Colorado River Commission of Nevada	189,000	452,192	193,797	645,989
United States, for Boulder City	20,000	56,000	24,000	80,000
Totals	1,448,000	2,631,651	1,128,136	3,759,787⟧

Schedule A

Long-term Schedule A contingent capacity and associated firm energy for offers of contracts to Boulder Canyon project contractors

Contractor	*Contingent capacity (kW)*	*Firm energy (thousands of kWh)*		
		Summer	*Winter*	*Total*
Metropolitan Water District of Southern California	*249,948*	*859,163*	*368,212*	*1,227,375*
City of Los Angeles	*495,732*	*464,108*	*199,175*	*663,283*
Southern California Edison Company	*280,245*	*166,712*	*71,448*	*238,160*
City of Glendale	*18,178*	*45,028*	*19,297*	*64,325*
City of Pasadena	*11,108*	*38,622*	*16,553*	*55,175*
City of Burbank	*5,176*	*14,070*	*6,030*	*20,100*
Arizona Power Authority	*190,869*	*429,582*	*184,107*	*613,689*
Colorado River Commission of Nevada	*190,869*	*429,582*	*184,107*	*613,689*

Schedule A—Continued

Long-term Schedule A contingent capacity and associated firm energy for offers of contracts to Boulder Canyon project contractors

Contractor	*Contingent capacity (kW)*	*Firm energy (thousands of kWh)*		
		Summer	*Winter*	*Total*
United States, for Boulder City	*20,198*	*53,200*	*22,800*	*76,000*
Totals	*1,462,323*	*2,500,067*	*1,071,729*	*3,571,796*

⟦(B) To purchasers in the States of Arizona, Nevada and California eligible to enter into such contracts under section 5 of the Boulder Canyon Project Act, contracts for delivery commencing June 1, 1987, or as it thereafter becomes available, of capacity resulting from the uprating program and for delivery commencing June 1, 1987, of associated firm energy as specified in the following table:

⟦SCHEDULE B

Contingent Capacity Resulting From the Uprating Program and Associated Firm Energy

State	Contingent capacity (kW)	Firm energy (thousands of kWh)		
		Summer	Winter	Total
Arizona	188,000	148,000	64,000	212,000
California	127,000	99,850	43,364	143,214
Nevada	188,000	288,000	124,000	412,000
Totals	503,000	535,850	231,364	767,214

Provided, however, That in the case of Arizona and Nevada, such contracts shall be offered to the Arizona Power Authority and the Colorado River Commission of Nevada, respectively, as the agency specified by State law as the agent of such State for purchasing power from the Boulder Canyon project: *Provided further,* That in the case of California, no such contract under this subparagraph (B) shall be offered to any purchaser who is offered a contract for capacity exceeding 20,000 kilowatts under subparagraph (A) of this paragraph.⟧

(B) To each existing contractor for power generated at Hoover Dam, a contract, for delivery commencing October 1, 2017, of the amount of contingent capacity and firm energy specified for that contractor in the following table:

Schedule B

Long-term Schedule B contingent capacity and associated firm energy for offers of contracts to Boulder Canyon project contractors

Contractor	*Contingent capacity (kW)*	*Firm energy (thousands of kWh)*		
		Summer	*Winter*	*Total*
City of Glendale	*2,020*	*2,749*	*1,194*	*3,943*
City of Pasadena	*9,089*	*2,399*	*1,041*	*3,440*
City of Burbank	*15,149*	*3,604*	*1,566*	*5,170*
City of Anaheim	*40,396*	*34,442*	*14,958*	*49,400*
City of Azusa	*4,039*	*3,312*	*1,438*	*4,750*
City of Banning	*2,020*	*1,324*	*576*	*1,900*
City of Colton	*3,030*	*2,650*	*1,150*	*3,800*
City of Riverside	*30,296*	*25,831*	*11,219*	*37,050*
City of Vernon	*22,218*	*18,546*	*8,054*	*26,600*
Arizona	*189,860*	*140,600*	*60,800*	*201,400*
Nevada	*189,860*	*273,600*	*117,800*	*391,400*
Totals	*507,977*	*509,057*	*219,796*	*728,853*

(C) To the Arizona Power Authority and the Colorado River Commission of Nevada and to purchasers in the State of California eligible to enter into such contracts under section 5 of the Boulder Canyon Project Act, contracts for delivery commencing ⟦June 1, 1987⟧ *October 1, 2017*, of such energy generated at Hoover Dam as is available respectively to the States of Arizona, Nevada, and California in excess of 4,501.001 million kilowatthours in any year of operation (hereinafter called excess energy) in accordance with the following table:

⟦SCHEDULE C

Excess Energy

Priority of entitlement to excess energy	State
First: Meeting Arizona's first priority right to delivery of excess energy which is equal in each year of operation to 200 million kilowatthours*: Provided, however,* That in the event excess energy in the amount of 200 million kilowatthours is not generated during any year of operation, Arizona shall accumulate a first right to delivery of excess energy subsequently generated in an amount not to exceed 600 million kilowatthours, inclusive of the current year's 200 million kilowatthours. Said first right of delivery shall accrue at a rate of 200 million kilowatthours per year for each year excess energy in an amount of 200 million kilowatthours is not generated, less amounts of excess energy delivered.	Arizona
Second: Meeting Hoover Dam contractual obligations under schedule A of section 105(a)(1)(A) and under schedule B of section 105(a)(1)(B) not exceeding 26 million kilowatthours in each year of operation.	
Third: Meeting the energy requirements of the three States, such available excess energy to be divided equally among the States.	Arizona, Nevada, and California⟧

Schedule C

Excess Energy

Priority of entitlement to excess energy	*State*
First: Meeting Arizona's first priority right to delivery of excess energy which is equal in each year of operation to 200 million kilowatthours: Provided, That in the event excess energy in the amount of 200 million kilowatthours is not generated during any year of operation, Arizona shall accumulate a first right to delivery of excess energy subsequently generated in an amount not to exceed 600 million kilowatthours, inclusive of the current year's 200 million kilowatthours. Said first right of delivery shall accrue at a rate of 200 million kilowatthours per year for each year excess energy in an amount of 200 million kilowatthours is not generated, less amounts of excess energy delivered.	*Arizona*
Second: Meeting Hoover Dam contractual obligations under Schedule A of subsection (a)(1)(A), under Schedule B of subsection (a)(1)(B), and under Schedule D of subsection (a)(2), not exceeding 26 million kilowatthours in each year of operation.	*Arizona, Nevada, and California*
Third: Meeting the energy requirements of the three States, such available excess energy to be divided equally among the States.	*Arizona, Nevada, and California*

(2)(A) The Secretary of Energy is authorized to and shall create from the apportioned allocation of contingent capacity and firm energy adjusted from the amounts authorized in this Act in 1984 to the amounts shown in Schedule A and Schedule B, as modified by the Hoover Power Allocation Act of 2011, a resource pool equal to 5 percent of the full rated capacity of 2,074,000 kilowatts, and associated firm energy, as shown in Schedule D (referred to in this section as "Schedule D contingent capacity and firm energy"):

Schedule D

Long-term Schedule D resource pool of contingent capacity and associated firm energy for new allottees

State	*Contingent capacity (kW)*	*Firm energy (thousands of kWh)*		
		Summer	*Winter*	*Total*
New Entities Allocated by the Secretary of Energy	*69,170*	*105,637*	*45,376*	*151,013*
New Entities Allocated by State				
Arizona	*11,510*	*17,580*	*7,533*	*25,113*
California	*11,510*	*17,580*	*7,533*	*25,113*
Nevada	*11,510*	*17,580*	*7,533*	*25,113*
Totals	*103,700*	*158,377*	*67,975*	*226,352*

(B) The Secretary of Energy shall offer Schedule D contingency capacity and firm energy to entities not receiving contingent capacity and firm energy under subparagraphs (A) and (B) of paragraph (1) (referred to in this section as "new allottees") for delivery commencing October 1, 2017 pursuant to this subsection. In this subsection, the term "the marketing area for the Boulder City Area Projects" shall have the same meaning as in appendix A of the General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects published in the Federal Register on December 28, 1984 (49 Federal Register 50582 et seq.) (referred to in this section as the "Criteria").

(C)(i) Within 36 months of the date of enactment of the Hoover Power Allocation Act of 2011, the Secretary of Energy shall allocate through the Western Area Power Administration (referred to in this section as "Western"), for delivery commencing October 1, 2017, for use in the marketing area for the Boulder City Area Projects 66.7 percent of the Schedule D contingent capacity and firm energy to new allottees that are located within the marketing area for the Boulder City Area Projects and that are—

(I) eligible to enter into contracts under section 5 of the Boulder Canyon Project Act (43 U.S.C. 617d); or

(II) federally recognized Indian tribes.

(ii) In the case of Arizona and Nevada, Schedule D contingent capacity and firm energy for new allottees other than federally recognized Indian tribes shall be offered through the Arizona Power Authority and the Colorado River Commission of Nevada, respectively. Schedule D contingent capacity and firm energy allocated to federally recognized Indian tribes shall be contracted for directly with Western.

(D) Within 1 year of the date of enactment of the Hoover Power Allocation Act of 2011, the Secretary of Energy also shall allocate, for delivery commencing October 1, 2017, for use in the marketing area for the Boulder City Area Projects 11.1 percent of the Schedule D contingent capacity and firm energy to each of—

(i) the Arizona Power Authority for allocation to new allottees in the State of Arizona;

(ii) the Colorado River Commission of Nevada for allocation to new allottees in the State of Nevada; and

(iii) Western for allocation to new allottees within the State of California, provided that Western shall have 36 months to complete such allocation.

(E) Each contract offered pursuant to this subsection shall include a provision requiring the new allottee to pay a proportionate share of its State's respective contribution (determined in accordance with each State's applicable funding agreement) to the cost of the Lower Colorado River Multi-Species Conservation Program (as defined in section 9401 of the Omnibus Public Land Management Act of 2009 (Public Law 111–11; 123 Stat. 1327)), and to execute the Boulder Canyon Project Implementation Agreement Contract No. 95–PAO–10616 (referred to in this section as the "Implementation Agreement").

(F) Any of the 66.7 percent of Schedule D contingent capacity and firm energy that is to be allocated by Western that is not allocated and placed under contract by October 1, 2017, shall be returned to those contractors shown in Schedule A and Schedule B in the same

proportion as those contractors' allocations of Schedule A and Schedule B contingent capacity and firm energy. Any of the 33.3 percent of Schedule D contingent capacity and firm energy that is to be distributed within the States of Arizona, Nevada, and California that is not allocated and placed under contract by October 1, 2017, shall be returned to the Schedule A and Schedule B contractors within the State in which the Schedule D contingent capacity and firm energy were to be distributed, in the same proportion as those contractors' allocations of Schedule A and Schedule B contingent capacity and firm energy.

【(2)】 *(3)* The total obligation of the Secretary of Energy to deliver firm energy pursuant to 【schedule A of section 105(a)(1)(A) and schedule B of section 105(a)(1)(B)】 *paragraphs (1)(A), (1)(B), and (2)* is 4,527.001 million kilowatthours in each year of operation. To the extent that the actual generation at Hoover Powerplant in 【any】 *each* year of operation (less deliveries thereof to Arizona required by its first priority under 【schedule C】 *Schedule C* of section 105(a)(1)(C) whenever actual generation in any year of operation is in excess of 4,501.001 million kilowatthours) is less than 4,527.001 million kilowatthours, such deficiency shall be borne by the holders of contracts under said 【schedules A and B】 *Schedules A, B, and D* in the ratio that the sum of the quantities of firm energy to which each contractor is entitled pursuant to said schedules bears to 4,527.001 million kilowatthours. At the request of any such contractor, the Secretary of Energy will purchase energy to meet that contractor's deficiency at such contractor's expense.

【(3) Subdivision E of the "General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects" published in the Federal Register May 9, 1983 (48 Federal Register commencing at 20881), hereinafter referred to as the "Criteria" or as the "Regulations" shall be deemed to have been modified to conform to this section. The Secretary of Energy shall cause to be included in the Federal Register a notice conforming the text of said Regulations to such modifications.】

(4) Subdivision E of the Criteria shall be deemed to have been modified to conform to this section, as modified by the Hoover Power Allocation Act of 2011. The Secretary of Energy shall cause to be included in the Federal Register a notice conforming the text of the regulations to such modifications.

【(4)】 *(5)* Each contract offered under subsection (a)(1) of this section shall:

【(A) expire September 30, 2017;】

(A) in accordance with section 5(a) of the Boulder Canyon Project Act (43 U.S.C. 617d(a)), expire September 30, 2067;

(B) not restrict use to which the capacity and energy contracted for by the Metropolitan Water District of Southern California may be placed within the State of California: *Provided,* That to the extent practicable and consistent with sound water management and conservation practice, the Metropolitan Water District of Southern California 【shall use】 *shall allocate* such capacity and energy to pump available Colorado River water prior to using such capacity and energy to pump California State water project water; 【and】

(C) conform to the applicable provisions of subdivision E of the Criteria, commencing at 48 Federal Register 20881, modified as provided in this section. To the extent that said provisions of the Criteria, as so modified, are applicable to contracts entered into under this section, those provisions are hereby ratified[.]*;*

(D) authorize and require Western to collect from new allottees a pro rata share of Hoover Dam repayable advances paid for by contractors prior to October 1, 2017, and remit such amounts to the contractors that paid such advances in proportion to the amounts paid by such contractors as specified in section 6.4 of the Implementation Agreement;

(E) permit transactions with an independent system operator; and

(F) contain the same material terms included in section 5.6 of those long-term contracts for purchases from the Hoover Power Plant that were made in accordance with this Act and are in existence on the date of enactment of the Hoover Power Allocation Act of 2011.

(b) Nothing in the Criteria shall be construed to prejudice any rights conferred by the Boulder Canyon Project Act, as amended and supplemented, on the holder of a contract described in subsection (a) of this section not in default thereunder on September 30, [2017] *2067.*

[(c)(1) The Secretary of Energy shall not execute a contract described in subsection (a)(1)(A) of this section with any entity which is a party to the action entitled the "State of Nevada, et al. against the United States of America, et al." in the United States District Court for the District of Nevada, case numbered CV LV '82 441 RDF, unless that entity agrees to file in that action a stipulation for voluntary dismissal with prejudice of its claims, or counterclaims, or crossclaims, as the case may be, and also agrees to file with the Secretary a document releasing the United States, its officers and agents, and all other parties to that action who join in that stipulation from any claims arising out of the disposition under this section of capacity and energy from the Boulder Canyon project. The Attorney General shall join on behalf of the United States, its officers and agents, in any such voluntary dismissal and shall have the authority to approve on behalf of the United States the form of each release.

[(2) If after a reasonable period of time as determined by the Secretary, the Secretary is precluded from executing a contract with an entity by reason of paragraph (1) of this subsection, the Secretary shall offer the capacity and energy thus available to other entities in the same State eligible to enter into such contracts under section 5 of the Boulder Canyon Project Act.

[(d) The uprating program authorized under section 101(a) of this Act shall be undertaken with funds advanced under contracts made with the Secretary of the Interior by non-Federal purchasers described in subsection (a)(1)(B) of this section. Funding provided by non-Federal purchasers shall be advanced to the Secretary of the Interior pursuant to the terms and conditions of such contracts.]

(c) OFFER OF CONTRACT TO OTHER ENTITIES.—If any existing contractor fails to accept an offered contract, the Secretary of Energy

shall offer the contingent capacity and firm energy thus available first to other entities in the same State listed in Schedule A and Schedule B, second to other entities listed in Schedule A and Schedule B, third to other entities in the same State which receive contingent capacity and firm energy under subsection (a)(2) of this section, and last to other entities which receive contingent capacity and firm energy under subsection (a)(2) of this section.

(d) WATER AVAILABILITY.—Except with respect to energy purchased at the request of an allottee pursuant to subsection (a)(3), the obligation of the Secretary of Energy to deliver contingent capacity and firm energy pursuant to contracts entered into pursuant to this section shall be subject to availability of the water needed to produce such contingent capacity and firm energy. In the event that water is not available to produce the contingent capacity and firm energy set forth in Schedule A, Schedule B, and Schedule D, the Secretary of Energy shall adjust the contingent capacity and firm energy offered under those Schedules in the same proportion as those contractors' allocations of Schedule A, Schedule B, and Schedule D contingent capacity and firm energy bears to the full rated contingent capacity and firm energy obligations.

⟦(e) Notwithstanding any other provisions of the law, funds advanced by non-Federal purchasers for use in the uprating program shall be deposited in the Colorado River Dam Fund and shall be available for the uprating program.

⟦(f) Those amounts advanced by non-Federal purchasers shall be financially integrated as capital costs with other project costs for rate-setting purposes, and shall be returned to those purchasers advancing funds throughout the contract period through credits which include interest costs incurred by such purchasers for funds contributed to the Secretary of the Interior for the uprating program.⟧

⟦(g)⟧ *(e)* The provisions of this section constitute an exercise by the Congress of the right reserved by it in section 5(b) of the Boulder Canyon Project Act, as amended and supplemented, to prescribe terms and conditions for ⟦the renewal of⟧ contracts for electrical energy generated at Hoover Dam. This section constitutes the exclusive method for disposing of capacity and energy from Hoover Dam for the period beginning ⟦June 1, 1987, and ending September 30, 2017⟧ *October 1, 2017, and ending September 30, 2067.*

⟦(h)⟧ *(f)*(1) Notwithstanding any other provision of law, any claim that the provisions of subsection (a) of this section violates any rights to capacity or energy from the Bounder Canyon project is barred unless the complaint is filed within one year after the date of enactment of ⟦this Act⟧ *the Hoover Power Allocation Act of 2011* in the United States Claims Court which shall have exclusive jurisdiction over this action. Any claim that actions taken by any administrative agency of the United States violates any right under this title or the Bounder Canyon Project Act or the Boulder Canyon Project Adjustment Act is barred unless suit asserting such claim is filed in a Federal court of competent jurisdiction within one year after final refusal of such agency to correct the action complained of.

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⟦(i)⟧ *(g)* It is the purpose of ⟦subsections (c), (g), and (h) of this section⟧ *this Act* to ensure that the rights of contractors for capacity and energy from the Boulder Canyon project for the period beginning ⟦June 1, 1987, and ending September 30, 2017⟧ *October 1, 2017, and ending September 30, 2067*, will vest with certainty and finality.

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